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IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1942.

No. 231

UNITED STATES OF AMERICA, *ex rel.*
FRANK PARKER,
Petitioner-Appellant,

vs.

PETER B. CAREY, Sheriff of Cook County,
Respondent-Appellee.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT AND BRIEF IN SUPPORT THEREOF.

WM. SCOTT STEWART,
Counsel for Petitioner.

BARNARD & MILLER, 33 S. Market St., Chicago. FRAnklin 0562

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CONSTITUTIONAL AND STATUTORY PROVISIONS.

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PETER B. CAREY, Sheriff of Cook County,
Respondent-Appellee.

PETITION FOR WRIT OF CERTIORARI.

MAY IT PLEASE THE COURT:

The petition of the United States of America on relation of Frank Parker, by Wm. Scott Stewart, his counsel, respectfully shows to this Honorable Court:

A.

Summary Statement of the Matter Involved.

A writ of habeas corpus was issued by the District Court of the United States for the Northern District of Illinois, Eastern Division (R. 11) and after the matter was submitted upon an agreed statement of facts, the

trial court remanded petitioner (R. 21). The necessary certificate (R. 24), required by the statute (Title 28, Judicial Code § 466, p. 2554), that there is probable cause for an appeal was made and the appeal to the Circuit Court of Appeals, Seventh Circuit, was perfected. The Circuit Court of Appeals affirmed the District Court and we now seek review here.

A statement of the facts appears in the opinion rendered by the Circuit Court of Appeals (R. 37). In our argument we shall point out our contention as to wherein the Circuit Court of Appeals misapprehended the facts as shown by the record.

B.

Specification of Errors to be Urged.

The Circuit Court of Appeals erred in affirming the judgment of the trial court.

C.

Basis of the Court's Jurisdiction.

This Honorable Court may by certiorari have this cause certified to it for determination under the act of February 13, 1925, 43 Stat. 938, Ch. 229, Sec. 1, 28 U. S. C. A., amending and reenacting Sec. 240 of the Judicial Code. United States Code 1940 Edition, Volume Two, p. 2533, Section 347 and Rule 38 of this Court.

The decision in the Circuit Court of Appeals was rendered April 23, 1943 (R. 37). The petition for rehearing, filed within the time allowed, was denied May 10, 1943 (R. 41).

D.

Questions Presented.

Did the State Court have jurisdiction of Parker when Parker appeared there? Did the fact that a *mittimus* had been issued by the Federal Court and served on Parker give the Federal Court exclusive jurisdiction until the command of the Federal judgment was executed? Did the State Court have jurisdiction of the person of Parker at the time he was ordered to commence his jail sentence? When the Sheriff turned Parker over to the Marshal did the Sheriff unlawfully interrupt the jail sentence? Is Parker being compelled to serve his sentence twice, and if so, is he being deprived of a substantial right guaranteed by the fourteenth amendment?

Did the local federal court err in deciding that the state court had no jurisdiction because of the federal conviction and did the Circuit Court of Appeals fail to apprehend and decide the only question submitted?

E.

Constitutional Provisions Involved.

The fourteenth amendment to the Constitution of the United States.

F.

Reasons for Granting the Writ.

Your petitioner has been denied relief and due process of law as guaranteed by the fourteenth amendment to the Constitution of the United States, as appears more fully from brief and argument annexed.

It is respectfully submitted that this petition for a writ of certiorari should be granted.

Respectfully submitted,

FRANK PARKER,

Petitioner-Appellant,

By WM. SCOTT STEWART,

Counsel for Petitioner.